

VIA ECF

October 31, 2014

The Honorable Valerie E. Caproni
United States District Judge
United States District Court for the
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square, Room 240
New York, NY 10007

Re: *In re London Silver Fixing, Ltd., Antitrust Litigation*, 14-MD-2573 (VEC)

Dear Judge Caproni:

The undersigned counsel for Plaintiffs in the consolidated and related matters write jointly in response to Part VIII of the Court's Order No. 1, dated October 14, 2014. (ECF No. 4)

I. BACKGROUND

On October 9, 2014, the Judicial Panel on Multidistrict Litigation centralized this multidistrict litigation before the Court under 28 U.S.C. § 1407, creating *In re London Silver Fixing, Ltd., Antitrust Litigation*, 14-MD-2573 (VEC) ("*Silver Fixing*").

Plaintiffs in the *Silver Fixing* litigation—entities that purchased physical silver or financial instruments tied to the price of silver—allege that, until very recently, Deutsche Bank, HSBC, and the Bank of Nova Scotia (collectively "Defendant Banks") participated in a price-setting panel called The London Silver Market Fixing, Ltd.,¹ which set global silver prices. Plaintiffs further allege that, via their participation in this price-setting panel, Defendant Banks conspired to manipulate the prices for physical silver and silver derivatives in violation of the federal commodity and antitrust laws.

After the JPML ruled, this Court directed Plaintiffs' counsel to confer with respect to subclassing and class leadership and to provide the Court with the following information:

1. Counsel's views on whether putative subclasses or other divisions of the class are necessary or desirable given any actual or potential conflicts of interest; and
2. A proposed method and schedule for the Court to appoint lead counsel – through open applications, nominations, or another process. If Plaintiffs' counsel has agreed upon recommended class leadership, they should so indicate.

(ECF No. 4 at 5)

¹ Some Plaintiffs also named The London Silver Market Fixing, Ltd. as a Defendant.

Having conferred on a number of occasions, Plaintiffs' counsel have come to a consensus with respect to both the need for subclassing and a procedure for the leadership application process.

II. THERE IS NO NEED FOR SUBCLASSES AT THIS STAGE

Counsel respectfully suggest that consistent with the Court's guidance in the *Gold Fixing* multidistrict litigation, there is no need for subclassing in *Silver Fixing*. In *Gold Fixing*, the Court rejected some calls for early subclassing, explaining that absent a "fundamental conflict," subclassing is unnecessary, particularly at the outset of litigation, given that the Court retains the inherent authority to subclass, even *sua sponte*, if circumstances eventually warrant. See Case No. 1:14-cv-01644-VEC, ECF No. 45 (June 16, 2014). In *Gold Fixing*, the Court observed that "at the various complaints' most basic level, all of the putative class members allege financial harm stemming from Defendants manipulating the market for gold via the London Gold Fixing."

The same holds true here. In essence, all of the putative class members in *Silver Fixing* allege financial harm stemming from Defendants' manipulation of the market for silver via the London Silver Fixing. At this time, there is no evidence of a "fundamental conflict" within the proposed class that would require subclassing. As the Court put it in *Gold Fixing*, "[t]o create putative subclasses before these potential conflicts develop places the cart before the horse at great expense to all class members." Plaintiffs, therefore, respectfully submit that there should be one putative class at this point in time.

III. APPLICATIONS FOR INTERIM LEAD CLASS COUNSEL SHOULD PROCEED THROUGH OPEN APPLICATIONS

Counsel respectfully suggest that the Court establish a schedule for competing applications for leadership positions, since there is no agreement upon a recommended class leadership structure. We propose that applications for interim co-lead and lead class counsel be reviewed under Rule 23(g) and that a single brief of no more than 15 pages per firm² (excluding exhibits) in support of those applications be submitted on November 14, 2014, so that the matter is fully briefed prior to the initial conference set for December 3, 2014.

Respectfully submitted,

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² By way of example, if two firms elect to apply as co-lead counsel, each would be allowed fifteen pages.

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cc: Counsel of Record via ECF

ECF CERTIFICATION

The filing attorney attests to having obtained concurrence regarding the filing of this document from the signatories to this document.

Dated: October 31, 2014.

Respectfully Submitted.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 31, 2014, I caused a copy of the foregoing document to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system will receive notice from, and may access copies through, the Court's electronic filing system.

Dated: October 31, 2014.

Respectfully Submitted.

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